

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

ANDRE LEE COLEMAN, #173324

Plaintiff,

Case No. 1:10-cv-354

v

HON. JANET T. NEFF

AARON J. VROMAN, et al.,

Defendants.

OPINION AND ORDER

This is a prisoner civil rights action filed pursuant to 42 U.S.C. § 1983. Plaintiff was granted leave to proceed as a pauper on April 27, 2010 (Dkt 3). On January 10, 2011, Defendant Vroman filed a motion requesting that the Court revoke Plaintiff's pauper status (Dkt 31). The Magistrate Judge issued a Report and Recommendation (R & R), recommending that this Court grant Defendant's motion (Dkt 47). The matter is presently before the Court on Plaintiff's objections to the Report and Recommendation (Dkts 48, 50).¹ In accordance with 28 U.S.C. § 636(b)(1) and FED. R. CIV. P. 72(b)(3), the Court has performed de novo consideration of those portions of the Report and Recommendation to which objections have been made. The Court denies the objections and issues this Opinion and Order.

Plaintiff objects that the Magistrate Judge incorrectly determined that several of Plaintiff's previous cases qualify for purposes of the "three strikes" rule under 28 U.S.C. § 1915(g). Plaintiff's

¹Plaintiff filed an Objection (Dkt 48) to Defendant's reply brief and subsequently filed another Objection (Dkt 50) objecting to the R & R. The Court does not address the propriety of these distinct filings since both Objections merely address the overall issue presented, and both Objections are without merit.

objections are without merit. Plaintiff has three cases that so qualify. Contrary to Plaintiff's argument, in *Coleman v. Lentin*, 2:92-cv-120 (W.D. Mich., Aug. 31, 1992), Plaintiff's case was dismissed as frivolous and without merit pursuant to the R & R (2:92-cv-120, Dkt 3), which the district court adopted as its opinion (Pl's. Obj., Dkt 50, Ex. 1). Further, to the extent Plaintiff argues that § 1915(g) applies only after an appeal has been either waived or resolved, the pending appeal in *Coleman v. Sweeney*, 2:09-cv-178 (W.D. Mich., Oct. 8, 2009), has been resolved: Plaintiff's case was dismissed for failure to state a claim, and the Judgment was affirmed on appeal on March 29, 2011. In *Coleman v. Kinnunen*, 2:05-cv-256 (W.D. Mich., Mar. 17, 2008), Plaintiff's case was dismissed for failure to state a claim, not by some other procedural mechanism, and was affirmed on appeal (2:05-cv-256, Dkts 57-58, Dkt 63 at 2). See *Pointer v. Wilkinson*, 502 F.3d 369, 377 (6th Cir. 2007). Plaintiff's objections are denied.

Accordingly, this Court adopts the Magistrate Judge's Report and Recommendation as the Opinion of this Court.

Therefore:

IT IS HEREBY ORDERED that the Objections (Dkts 48, 50) are DENIED and the Report and Recommendation (Dkt 47) is APPROVED and ADOPTED as the Opinion of the Court.

IT IS FURTHER ORDERED that Defendant's Motion to Revoke Plaintiff's *In Forma Pauperis* Status (Dkt 31) is GRANTED.

IT IS FURTHER ORDERED that Plaintiff's *In Forma Pauperis* Status is REVOKED.

IT IS FURTHER ORDERED that Plaintiff is required to submit the entire \$350.00 filing fee² within thirty (30) days of the date of entry of this Order; Plaintiff's failure to do so will result in

²The Court's records indicate that Plaintiff has paid only the initial filing fee of eighty-three cents (\$0.83). Thus, Plaintiff still owes three hundred forty-nine dollars and seventeen cents

dismissal of this action (any such dismissal will not, however, negate Plaintiff's obligation to pay the filing fee in full).

Dated: May 27, 2011

/s/ Janet T. Neff
JANET T. NEFF
United States District Judge

(\$349.17) of the filing fee.